"BEING INDIGENOUS"

Debating The Reproduction of Knowledge and Its Articulation into The Law

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Abstract

Being indigenous means 'had claims of time and space'. Being indigenous also means 'had historical legitimacy', as well as legitimacy to exclude the others. Then, being indigenous is privilages and rights, as such subsidies, treatments, etc. It happen because there is debatable articulation method to define whom we called as indigenous. Perhaps we had checklist for measurement to define. But, who "we" is? We-ness, as well as other-ness, comes from and into the reproduction of knowledge. Bacause of the binary oppositional is structural debate, then the discourse of indigenous is constructed, not just given. The reproduction of knowledge about who-indigenous-is had large scale impacts, legally and politically.

Keywords: reproduction of knowledge, articulation into law

A. Problematization

Debate around indigenous term was begin from the critics toward the definition of "who indigenous is". Democracy, as a knowledge and method as well as regime, contributes significantly the definition of whom "self" and and whom "other". It is not just romaticism of ethnography. Recently, the identity of indigenousity has embrace from the identity itself into its claims for entitlement and treatment. Considering that indigenousity has legitimate basis, culturally as well as historically, many communities was arose quantitatively and appeals their claim for political succession or, at least, access into it. There is a situation that we can say as liberal democratic regime that provides the devices for those claim. For instance, the qualification of position such

major of city or chief of the district must came from native, which known as Putra Daerah paradigm. Somehow, it seen as the positive discrimination, especially in effort to emansipate local society and theirs interests. But in the other side, there is exclusion toward others. The affirmative action, in some prominent case as: policy, had dilemma of representation. In one side, it gives benefit to who called as indigeous actor. In other side, there is exclusion to whom that called as outsider.

There is crusial concern toward methodology of defines and articulates who indigenous is. This article will discus articulation method of indigenousity. The debate about indigenous, not just about marginalization, but also how the community uses liberal democratic regime`s devices to escalate their interests. The interest is not only about recognition, but also their claims in national scale. International agents, commercial actors, national apparathuses, etc, plays game in same field, even in different capability, with whom mostly called: indigenous community. Then, when there is some efforts to emancipate or to protect the indigenous community in brutal eco-political battlefield, the community itself uses the opportunities to bring their 'microscopic' agenda into national grand agenda. And next, as we seen, several indigenous communities goes as pressure group, with their legitimation claims. The differances going more bold and atractive. The unique going more 'sacral', and so on. Are the project of modernity came to justify the indigeous-ization? What to extend being indigenous? Now, it's not easy to identify who indigenous is, as before.

B. The Reproduction of Indigenousity and Its Claim

Indonesian society is known as the communalistic society. In communal society, there are certain claims about who is entitled to represent the group, one of them

through the identification 'symbolistics' to the representation. Indigenousity based on the identity of particular groups at the local level, apparently drives the creation of a distinctive political configurations. One of the highlights is the emergence, or strengthening, local elites. Of course, every elite foundation have their legitimacy, could be a historical claim, or the power of certain social capital. Based on the claims, it creates powers which previously might have been informal, or at least latent, but now has a concrete strength at the local level.

The claim, formality, consequentiality, and reflexivity of ritual bring to the fore certain dilemma implicit in the very nature of representation – dilemmas that are thoroughly implicated with general problems of power, authority, and agency, even in local level. Both sense of the word 'representation' are : depiction (representation as something) and delegation (representation by someone or something)[1].

A democratic government, especially one that has strong organizational roots in society, in Rueshemeyer[2] and Rueschemeyer[3] views, may be better able to make choice under condition of even severe scarcity than an authoritarian regime because it can count on support grounded in legitimacy, rather than solely on the conditional support that vanishes when 'the goods' are not delivered. Policies that rigorously seek to establish competitive market as the primary regulatives of economic life tend to have atomizing consequences that undercut vigorous social participation and the collective organization of interests.

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[1] Keane, Web. 1997. **Sign of Recognition: Power and hazards of Representation in an Indonesian Society**. Berkeley: University of California Press.

[2] Rueschemeyer, Rueschemeyer, and Wittrock (eds). 1998. **Participation and Democracy, East and West : Comparisons and Interpretations.** New York : ME Sharpe. pg.17

[3] Rueschemeyer, Stephen, and Stephen.1992. **Capitalist Development and Democracy**. Cambridge : Polity Press.

Thompson[4] identified the main factors of political participation found in citizenship theories. First, participation of citizen protect them against sinister interests. Second, avoiding excluded interests. Third, providing political knowledge. Fourth, improving the legitimacy of democratic institutions. Fifth, function of participation is self-realization. Democratic representatives create incentives and disincentives for civic participation. Nagel[5] contend that while spontaneous popular action warms the heart of any good democrat, a moment`s reflection shows that the people initiate little of what we call participation. Acts of participation are stimulated by elites. Participant in the sense of encounter stage complex performance about who they are (such as named clan), who they are each other (such as descendents or affines), and who they are together (such as self-respecting people allied in authoritative performance). In the process, they engage, challenge, or otherwise presume the existence of particular sorts of interlocators, to the exclusion of other sorts. In scenes of encounter and the events that support them, participants interactively define themselves and each other (something that also has quiter entailments for power differences within each group). Much of politics and even cosmology of representations concerns this effort. The resistances it generates, and the hazards to which it is prone. But the effort and hazard are not matters of which people are fully conscious, and the politics are not to be found in a set of choice clearly laid out before autonomous strategizing agents.

Democracy coincided with the opening of an opportunity to gain strategic positions in the local community, making the fight an increasingly massive range of interests. Regional autonomy has given rise to local bossism, or at least strengthen the local regime that has long existed. Political power previously monopolized by the

[4] Thompson, Denis. 1970. **The Democratic Citizen**. Cambridge : Cambridge University Press

[5] Nagel, Jack. 1987. **Participation**. Eaglewood Cliffs New Jersey : Prentice Hall. pg.3-4

central government, is currently spreading in areas where the local people really are still closely by the bonds of patron-client. In patron-client society cases, as noted by Schiller[6], decentralization which is purposed to disperse central government's power and authority to local level precisely often empower local powerful elites making people dependent upon them and encouraging pseudo-democracy which consequently perpetuate poverty and disparities.

C. Indigenous Community as Interest Groups

The study of interest groups and interest representation is an 'old' concern of political science, but one that should enjoy new life[7]. A focus of interest representation entails three component parts : a conception of interests expressed, a conception of the process of interest representation, and impact on public decissions. Interests are constantly being defined, redefined, and even discovered as when some new action proposal appears on the political scene[8]. Interest groups display a wide range of diversity depending on their degree of organizational and strategic cohesiveness and the extent of their antiestablishment status. Combining the work of McCarthy and Zald[9], Tilly[10], Eyerman and Jamison[11], and Ost[12], interest groups manifest these elements

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[6] Schiller, Jim, 2009, "Electing District Heads in Indonesia", in Erb, Maribeth and P. Sulistiyanto (eds). **Deepening Democracy in Indonesia? Direct Elections for Local Leaders**. Singapore: Institute of Southeast Asian Studies.

[7] Crotty, William, Schwartz, Mildred, & Green, John. 1994. **Representing Interests and Interest Group Representation.** Lanham : University Press of America. pg.9

[8] Salisbury, Robert H. 1994. "Interest Structure and Policy Domains : A Focus for Research" in Crotty, William, Schwartz, Mildred, & Green, John. 1994. **Representing Interests and Interest Group Representation**. Lanham : University Press of America. Pg.12-20

[9] McCarty, John & Zald, Mayer. 1977. "Resource Mobilization and Social Movements : A Partial Theory" in **American Journal of Sociology** Vol.82.pg.1212-1241.

[10] Tilly, Charles. 1984. "Social Movements and National Politics" in Bright, Charles and Harding, Susan. (eds). 1984. **State Making and Social Movements**. Ann Harbor : University of Michigan Press.

such: (1) represent people outside established political institutions or who feel a low level of political efficacy in affecting those institutions; (2) seek to change elements of the socioeconomic and political structure, make visible public demands for changes in the distribution or exercise of power in society, or both; (3) employ collective political action that uses, in whole or in large part, non- institutional channels such as protests, sit-ins, passive resistance, and sometimes illegal means such as violence; (4) hold strong antipolitics stance particularly in their formative period, manifesting as an antiestablishment, antigovernment attitude that sees power as located not in the state but in civil society; (5) have a loosely defined, often amorphous organizational structure; and (6) usually either lack a clearly defined leadership or have a charismatic leader.

Angus McIntyre[13] follows with an analysis of the middle way leadership concept. Indonesia`s survival as an 'association', he posits, is contingent upon the type of leadership it receives. Strong leadership, characterised by moralism, divisiveness and political division, thrives in an authoritarian system. Robert Cribb[14] canvasess the prospect of Indonesia shedding the burden of empire and discusses the resistance to this concept in elite circle where the emotional power of the 'idea of Indonesia' is prevalent. The Indonesia experiment, he asserts, is contingent upon three factors: the potency of centrifugal forces in the outlying regions; the ability of the centre to accentuate the

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[11] Eyerman, Ron and Jamison, Andrew. 1991. **Social Movement : A Cognitive Approach**. University Park : Pennsylvania State University Press.

[12] Ost, David. 2001. "Poland : Parties, Movements, Groups, and ambiguity" in Thomas, Clive S. (ed). 2001. **Political Parties and Interest Groups : Shaping Democratic Governance**. London : Lynne Reinner Publisher.

[13] McIntyre, Angus. 2001. "Middle Way Leadership in Indonesia : Sukarno and Abdurrahman Wahid Concept" in Lloyd, Grayson & Smith, Shannon. (eds). 2001. **Indonesia Today : Challenges of History**. Lanham : Rowman & Littlefield Publisher Inc. pg.85-96

[14] Cribb, Robert. 2001. "Brief Reflection on Indonesian Social History" in Lloyd, Grayson & Smith, Shannon. (eds). 2001. **Indonesia Today : Challenges of History**. Lanham : Rowman & Littlefield Publisher Inc. pg.231-233

positive features of Indonesia unity, and the desire of the island of Java to remain a part of Indonesia.

D. Articulates Indigenousity into The Law

Due the enormous interdependence of the production and consumption functions of communites and individuals, negative externalities are becoming larger and larger. This implies that living together and coexisting in the modern societies is becoming increasingly costly, taxing, time consuming, complicated and difficult for all individual. Many interrelationship are becoming ever more a zero-sum-game. Such a phenomenon is making citizens more selfish and disunited, and less law abiding, something that will affect democracy negatively in the future, as individuals will become more unruly. Consequently, governments will find it increasingly more difficult to govern, in spite of the great improvements that people have experienced in their living standards and education. Also, politics and the lives of ordinary people are becoming more and more litigious rather than negotiation.

Adaption is one solution (and one which has been used for centuries in the SouthEast Asian region) to the problem of sustaining tradition. However, the pressures on traditional values which arise from economic growth, or 'development', demand other answers[15]. Then, legal system, as example, could be used to explore broader matter of the adaptation into its compromise. Most reformist lawyers in Indonesia would now agree that 'reformasi hukum' is at best a confused mess[16]. Questions of

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[15] Hooker, Virginia Matheson. 1993. **Culture and Society in New Order Indonesia**. Oxford : Oxford University Press. pg.13

[16] Lindsey, Tim. 2000. "Corruption and The Failure of Law Reform" in in Manning, Chris and Van Diermen, Peter. 2000. **Indonesia in Transition : Social Aspects of Reformasi and Crisis**. Singapore : ISEAS. Pg.284

Nielsen[17] about legal turbulences then remained : So why is this happening? Why has Indonesia`s 'rush to law'? Or, resulted in the same old trope of 'law without law'?

Politicians and political parties, as well as private citizens, tend to resort to court action to resolve any conflicts among them. Courts of Justice are becoming overwhelmed by the many trivial conflicts. The theory of interests groups and its combination with divided government would provide very grim predictions on legislation. Supplementary explanations have been advanced in its favour. First is the so-called 'conspiratorial' theory based on differentials in costs of politics compliance among institutions. A close relative of the conspiratorial theory is the interpretation of legislation as a symbolic gesture to please the general public [18.] Finally, interest group theory could also be based on consumers. Rent-seeking legislation could in this case have originated in the strong interest for political amenities expressed by upper-middle class individuals.

Horizontal and communal conflicts also often emerge as implication of the rising primordialism in the regional autonomy and administrative fragmentation[19]. It is frequently worsened by the involvement of 'indigenous bosses' collaborating with local leaders and elite parties colouring the local democracy with violence, intimidation, discrimination and riots. The situation is called by Bunte[20] as 'big bang

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[17] Nielsen, William. 1999. "The Rush to Law : The IMF Legal Conditionalities Meet Indonesia`s Legal Culture Realities', in Lindsey, Tim and Duncan, Drew (eds). 1999. **Prospects for Reform in Post-Soeharto Indonesia.** Centre for Asia Pacific Initiatives. British Columbia : Univerity of Victoria Press

[18] Pardo, Jose Casas and Schwartz, Pedro (eds). 2007. **Public Choice and the Challenges of Democracy.** Cheltenham : Edward Elgar Press. pg.21 and 123

[19] Malley, M. (2003). "New Rules, Old Stuctures and the Limits of Democratic Decentralisation," in E. Aspinall and Greg Fealy (eds). **Local Power and Politics in Indonesia: Decentralization and Democratizations**. Singapore: Institute of Southeast Asian Studies.

[20] Bunte, Marco and Andreas Ufen. **Democratization In Post-Suharto Indonesia**. New York: Routledge.

decentralization' haunting state with more rooted corruption, a weak rule of law, a limited state capacity, and society disorder.

Many observers conclude that the government operates from a broad base of legitimacy. More support, such Liddle[21] and Emerson[22] said, has been bought with distribution than through coercion. Liddle[23] sees a wide acceptance of repressive institutions and few demands for democratic participation. Speaking of the Orde Baru, Robinson[24] also decided that it rules with the general acquiescence of most people and in the general interests of the middle and upper classes and has provided the conditions for economic growth and social stability. In fact, the state protects the interests of the middle and upper classes, quite directly at times, against the interests of the poorest. The press frequently recounts, for example, land disputes between large developmenters or corporations and small owners, squatters, or others with unwritten claims to land. Most of the victims was identified – by themself or by others – as indigenous community.

Compromise is everywhere a primary method of dispute settlement. In some societies, however, compromise is more prominent than in other; or maybe it should be put the other way around that some societies rely more on formal conflict resolution that others. A few of the social variables are clear. Small communities where face to face relations predominate tend to emphasize conciliation and compromise. Conversely, unfamiliar relationships make formal third party decisions more appropriate. Whenever common interest of disputants can be established, compromise is likely. The burden of

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[21] Liddle, William. 1989b. **The Relative Autonomy of The Third World Politician : Soeharto and Indonesian Economid Development in Comparative Perspective**.   American Political Science Association.

[22] Emerson, Donald. 1987. "Invisible Indonesia". **Foreign Affair** Vol 66 (2). Pg.368-387

[23] Liddle, William. 1985. "Soeharto`s Indonesia : Personal Rule and Political Institutions". **Pacific Affairs** Vol 58. Pg.68-90.

[24] Robinson, Richard. 1986. **Indonesia : The Rise of Capital**. Australia : Allen and Unwin

the concept of legal system, as it is used here, is procedure. What we want to understand, essentially, is how men get things done in society, how they manage their conflicts, what kinds of role they rely upon for assistance, how these roles are related systematically, and what resources of authority they have. The second, substantive, component of legal culture consist of fundamental assumptions about the distribution and uses of resources in society, social right and wrong, and so on. Because these assumption change over time, as societies themselves change, the concept of substantive legal culture requires a dynamic element. This is provided by a notion of ideological themes of economic, social, and political ideas which, as they evolve more or less quickly, are reflected in substantive legal behavior[25].

In general, rulers govern on a day-to-day basis, according to the latest opinion polls. We know that the difference between an ordinary (not to say mediocre) politician and the statesman lies in the fact that the former rules according to the preferences of the public as expressed in the opinion polls, whether the outcome would be reasonable and good for the community or not, while the letter is a politician who can convince people that some policy, which is not popular but which is good for the community, has to be implemented. The best theoretical instruments to analyses the political markets are modeling the latter as an oligopolistic market, strategic behaviour, and games theory.[26]

[25] Lev, Daniel S. 1972. " Judicial Institutions and Legal Culture in Indonesia" in Hold, C, Anderson, B, and Siegel, J. (eds). 1972. **Culture and Politics in Indonesia**. Ithaca : Cornell University Press. pg.246-281

[26] Pardo, Jose Casas and Schwartz, Pedro (eds). 2007. **Public Choice and the Challenges of Democracy**. Cheltenham : Edward Elgar Press. pg.18-17

E. Epilog

The term 'indigenous' itself been co-opt-by. The real meaning of this term has been obscured by the dual connotations that it has acquired : of a silent mass on the one hand, and an uncontrollable chaotic horde on the other. The situation has been identified that may be profoundly anti-democratic. Could be realizes that indigenous society is not always democratic and even able to marginalize other groups entirely from participation in the public sphere. Furthermore, encouraged by the neo-utilitarian arguments, states that actively pursue these policies also often try to undercut intentionally the self-organization of society. One of the more depressing findings or recent research on the conditions of democracy is indeed that dominant economic and social groups will turn against democracy unless their interests are protected by large conservative or clientelistic parties or secure pacts with other political forces.

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